

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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KEITH BUSH and ANTHONY BENNETT,

Plaintiffs,

v.

**ORDER**  
03-CV-759S

D.O.C. COMMISSIONER GLEN GOORD,  
MICHAEL GIAMBRUNO, GERALD ELMORE,  
TOM BRUNETTE, and JEFF WEBER,

Defendants.

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1. On October 9, 2003, Plaintiffs commenced this civil rights action against Defendants under 42 U.S.C. § 1983. On October 9 and December 30, 2003, Plaintiffs moved to proceed *in forma pauperis*. (Docket Nos. 2, 8.) On May 27, 2004, this Court referred this matter to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B). (Docket No. 27.) On April 27, 2007, Defendants filed a Motion for Summary Judgment. (Docket No. 119.)

2. On January 7, 2008, the Honorable Jeremiah J. McCarthy, United States Magistrate Judge, filed a Report and Recommendation, in which he recommended (1) that Plaintiffs' Motions for Leave to Proceed *In Forma Pauperis* be granted *nunc pro tunc*, and (2) that Defendants' Motion for Summary Judgment be granted. (Docket No. 135.)

3. On April 29, 2008, this Court accepted in part and recommitted in part Judge McCarthy's Report and Recommendation. (Docket No. 139.) This Court accepted Judge McCarthy's recommendation to grant Plaintiffs' Motions to Proceed *In Forma Pauperis*, but recommitted Defendants' Motion for Summary Judgment for "further factual development and discussion." (Docket No. 139, ¶ 5.)

4. After additional discovery and receiving supplemental briefing and oral argument, Judge McCarthy filed a Supplemental Report and Recommendation on February 23, 2009, in which he again recommends that Defendants' Motion for Summary Judgment be granted, and also recommends that Plaintiff Bush be terminated as a plaintiff because he is no longer incarcerated, which Plaintiffs do not oppose. (Docket No. 164.)

5. No objections to Judge McCarthy's Supplemental Report and Recommendation were received from either party within ten days of the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3). This Court has carefully reviewed the Supplemental Report and Recommendation and is now satisfied that the record is complete and fully supports Judge McCarthy's recommendation that Defendants' motion be granted. Accordingly, this Court will accept that recommendation and grant Defendants' motion.

IT HEREBY IS ORDERED, that this Court accepts Judge McCarthy's Supplemental Report and Recommendation (Docket No. 164) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that upon consent of Plaintiffs' counsel, the Clerk of the Court is directed to TERMINATE Plaintiff Keith Bush as a Plaintiff in this action.

FURTHER, that Defendants' Motion for Summary Judgment (Docket No. 119) is GRANTED.

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: March 24, 2009  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge